Texas Ry. v. *United States*, 234 U. S. 342, 351; *Erie R. R.* v. *New York*, 233 U. S. 671. For a discussion of the principal case in the district court, see 26 HARV. L. REV. 757.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL EMPLOYER'S LIABILITY ACT: ASSUMPTION OF THE RISK AS AFFECTED BY EMPLOYER'S VIOLATION OF STATE FACTORY ACT. — The plaintiff was injured, while engaged in the car shops of an interstate carrier upon the repair of a car used in interstate commerce, by machinery left unguarded in violation of the state "factory act." He now sues under the Federal Employer's Liability Act, which provides (35 STAT. AT L. 65, c. 149, § 4) that no employee shall be held to have assumed the risks of his employment where the violation "of any statute enacted for the safety of employees contributed to the injury." *Held*, that assumption of the risk precludes recovery. *Lauer* v. *Northern Pacific Ry. Co.*, 145 Pac. 606 (Sup. Ct., Wash.).

The decision follows a recent *dictum* of the Supreme Court to the effect that the word "statute" in the above quoted provision must, in the interest of uniformity, be construed to refer to federal statutes only. *Seaboard Air Line R. Co.* v. *Horton*, 233 U. S. 492, 503. In the actual case, however, the only state statute involved was a state liability statute which was plainly superseded by the federal act. If the act be construed as evidencing a desire for absolute uniformity in this particular, it would follow that no state statute enacted for the protection of employees, though not superseded by federal legislation, can have any effect in actions under the federal act. But it is submitted that violation of a subsisting state statute of this character would clearly be admissible to show negligence. See THORNTON, FEDERAL EMPLOYER'S LIABILITY, 2 ed., § 47. The prevailing tendency of recent common-law decisions has been to deny the defense of assumption of risk in case of injury due to violation of a statutory duty toward employees. See 26 HARV. L. REV. 262. Federal statutes of this character cover a relatively small portion of the field and leave in force a vast number of state statutes enacted for the protection of employees. It seems much more reasonable to think that Congress intended to adopt the prevailing common-law view as to the assumption of the risk of violation of any existing statutory duty, whether federal or state, than to think that in the interest of uniformity this large body of safety legislation was intended to be almost wholly overridden as to interstate employers, without the substitution of any similar federal legislation. It is to be regretted that the Washington court felt bound to overrule its previous decision. *Opsahl* v. *Northern Pacific Ry. Co.*, 78 Wash. 197, 138 Pac. 681.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — WHETHER COVENANT NOT TO ASSIGN BINDS ASSIGNEES NOT NAMED. — A lease contained a covenant not to assign without the consent of the lessor, with the usual clause of reëntry. After one assignment by license, that assignee in turn assigned, but without permission. The lessor now seeks to enter for breach of the covenant, which did not in terms bind assignees. *Held*, that the plaintiff may enter. *Goldstein* v. *Saunders*, 138 L. T. J. 314 (Ch. Div.).

No question arises in this case as to whether the condition survived the first license to assign, since the rule in *Dumpor's Case*, that a prior license waiving a condition against assignment of the lease destroys the condition utterly, has been abrogated by statute in England. 22 & 23 VICT., c. 35; 23 & 24 VICT., c. 38, § 6. *Cf. Dumpor* v. *Symmes*, 4 Co. 119 *b*. There remains the problem whether the assignee was bound by a covenant not expressly naming assigns. If the covenant in terms mentions assigns, it runs with the land, and is binding upon them. *Williams* v. *Earle*, L. R. 3 Q. B. 739; *McEacharn* v. *Colton*, [1902]

A. C. 104. It no less touches and concerns the land when assigns are not expressly included. It seems clear, moreover, that these words are not required to make such a covenant run with the land under the rule in *Spencer's Case*, 5 Co. 16. The formula usually employed in such covenants and employed in the principal case, is "not to assign without the consent of the lessor." This, it has been said, shows that assignments by permission are contemplated, and that the covenant is accordingly intended to bar unauthorized assignments by any tenant. *Toronto Hospital Trustees* v. *Denham*, 31 Upp. Can. C. P. 203. Even without this formula, the covenant indicates merely that assignments were not contemplated, not that the covenant was to lose its force if one did occur. The principal case, therefore, takes what appears to be the common-sense view of the matter and substitutes the assignee for the original lessee, just as in any covenant running with the land. See 1 TIFFANY, LANDLORD AND TENANT, p. 936.

LIBEL AND SLANDER — ACTS AND WORDS ACTIONABLE — WORDS IMPUTING IMMORALITY TO SCHOOL TEACHER: WHETHER ACTIONABLE *PER SE*. — The defendant charged the plaintiff, a school master, with immoral conduct with a certain woman. The jury found the words were spoken in such a way as to imperil the plaintiff's retention of his office, and imputed that he was unfit to hold it. *Held*, that the words are actionable *per se*. *Jones* v. *Jones*, 31 T. L. R. 245 (K. B. Div.).

The decision goes on the ground that the words tend to injure the plaintiff in his profession or calling. This class of slander *per se* may be divided into three heads. First, those words which impute the plaintiff's incompetence to fill his position although no mention of his business be made, as insolvency in the case of a merchant, or ignorance in the case of a doctor or school teacher. *Stanton* v. *Smith*, 2 Ld. Raym. 1480; *Cawdry* v. *Highley*, Cro. Car. 270. And see *Watson* v. *Vanderlash*, Hetley 69, 71. Although a charge of habitual drunkenness might be said to impute incompetency for almost any trade or profession, it is difficult to see how immorality of the sort charged in the principal case would have any such tendency, except possibly in the case of a clergyman. See *Dod* v. *Robinson*, Aleyn 63. Secondly, words which impute misconduct in the practice of a profession, but do not necessarily charge incompetency. In such cases it is necessary that the words be spoken of the plaintiff in his professional capacity. Charges of immorality or dishonesty against a physician, or insolvency against a solicitor, are examples of this class. See *Ayre* v. *Craven*, 2 A. & E. 2; *Dauncey* v. *Holloway*, [1901] 2 K. B. 441; *Jones* v. *Bush*, 131 Ga. 421, 62 S. E. 279. Thirdly come those cases where the plaintiff's position is a salaried one, and the charge made is one which if true would cause his dismissal although imputing neither incompetency nor misconduct in fulfilling professional duties. *Cf. Alexander* v. *Jenkins*, [1892] 1 Q. B. 797; *Gallwey* v. *Marshall*, 9 Exch. 294. On this ground a general charge of immorality against a school teacher may well be held actionable. See *Nicholson* v. *Dillard*, 137 Ga. 225, 73 S. E. 382.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — GENERAL RELEASE OF EMPLOYER UPON PAYMENT OF COMPENSATION: RIGHT TO SUBSEQUENT RECOVERY AGAINST THIRD PARTY. — The plaintiff was injured in the course of his employment under circumstances creating legal liability in a third party for negligent injury. The employer was found not to be negligent, but made payment to the plaintiff under the Workmen's Compensation Act, and received a general release. The plaintiff now sues the third party for damages. *Held*, that he may recover. *Jacowicz* v. *Delaware, L. & W. R. Co.*, 92 Atl. 946 (Ct. Err. & App., N. J.).

This decision is a counterpart of the cases holding that the release of a third party upon recovery of judgment against him does not exonerate the employer